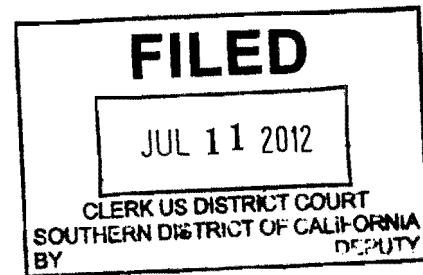


1 Pamela Chyba
2 c/o:7734 Madrilena Way
3 Carlsbad, California 92009



8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **PAMELA CHYBA**

11 Plaintiff,

12 **vs.**

13 **PROGRESSIVE MANAGEMENT SYSTEMS, AKA**
14 **"PMS"**

15 Defendant

Case No. 12CV1723 MMA BLM

**PLAINTIFF'S JUDICIAL NOTICE/COGNIZANCE
WITH CLAIM OF RIGHTS**

Date: 7/9/2012

JUDICIAL NOTICE/COGNIZANCE WITH CLAIM OF RIGHTS

21 Plaintiff, in accordance Federal Rules of Evidence, Rule 201 (in conjunction with the
22 Supremacy Clause of the constitution for the united States of America) and any other
23 applicable authority unknown to Plaintiff, hereby NOTICES the Court to take **JUDICIAL NOTICE**
24 of the following facts and law:

1 **JUDICIAL COGNIZANCE:** "Judicial notice or knowledge upon which a judge is bound to
2 act without having it proved in evidence. See Judicial notice." (*Black's Law Dictionary*, 7th
3 Edition, page 760.
4

5 **JUDICIAL NOTICE:** "... The cognizance of certain facts which judges and jurors may
6 properly take and act upon without proof, because they already know them. Such notice
7 excuses party having burden of establishing fact from necessity of producing formal proof."
8 (*Black's Law Dictionary*, 7th Edition, page 761).
9

10 See also, Federal Evidence Rule 201, which Plaintiff moves the Court to also take
11 JUDICIAL NOTICE pursuant to said rule.

12 All parties and officers of the court are hereby placed on NOTICE under authority of the
13 supremacy, due process and equal protection clauses of the United States Constitution and
14 the common law authorities of *Hughes v. Rowe*, 449 U.S. 5 (1980); *Haines v. Kerner*, 404 U.S.
15 519 (1972); *Platsky v. C.I.A.* 953 F.2d. 26 (2nd Cir. 1991); *Anastasoff v. United States*, 223 F.3d
16 898 (8th Cir. 2000); and *Trinsey v. Pagliaro*, 229 F. Supp. 647, 649 (D.C. Pa. 1964) and similar
17 cases noted herein.
18

19 *Rowe* and *Haines* collectively states that courts must not hold *pro se* litigants to the
20 same standards as a lawyer of the bar regarding procedure, etc.; that courts are to "liberally
21 construe" *pro se* litigant's submissions and to make "reasonable allowances" due to their lack
22 of legal training.
23

24 Accordingly to the cases of *Rowe*, if there are any defects in the Plaintiff's moving
25 papers, the Plaintiff, (hereinafter referred to as the "Undersigned"), respectfully requests that
26 the Court interpret said defects and render a proper and just decision, or point out the
27 28

1 defects for correction and grant permission and provide sufficient time to re-file said
2 paperwork rather than penalizing my motion for procedure or other errors due to the
3 Undersigned's lack of legal training.
4

5 In *Platsky*: a court errs if the court dismisses the *pro se* litigant without instruction of
6 how pleadings are deficient and how to repair pleadings.
7

8 Regarding *Anastasoff*: The Undersigned hereby invokes the powers and protections of
9 *Anastasoff*, Part II and Part III of the decision especially, wherein it speaks to the historical
10 underpinnings of the Doctrine of Precedence. Litigants' constitutional rights are violated
11 when courts depart from precedent where parties are similarly situated. All litigants have a
12 right to have their claims adjudicated according the rule of precedent.
13

14 **COPYRIGHT NOTICE:** The Undersigned quoted citations "as purported in" context to
15 copyrighted case law, statutes, rules of court and court decision material as found in books
16 published with Federal or State funding supplied by the Citizens of the United States of
17 America and intended for use by attorneys, and does so under the provisions of the Fair Use
18 clause of the copyright laws of the United States (see 17 USC § 107).
19

20 **PLEASE TAKE NOTICE:** An attorney cannot testify or authenticate evidence for its
21 client: An attorney's affirmation or testimony generally cannot advance substantive proof.
22 Moreover, counsel for Defendant cannot testify or plea for its client¹ nor can counsel
23

24 ¹ It is well established that statements of counsel of alleged facts are not sufficient to
25 establish facts or evidence in the case for its client. See *Trinsey v. Pagliaro*, 229 F. Supp. 647,
26 649 (D.C. Pa. 1964) ("The defendants' motion to dismiss for failure to state a claim
27 unsupported by affidavits or depositions is incomplete because it requests this Court to
28 consider facts outside the record which have not been presented in the form required by
Rules 12(b) (6) and 56(c). *Statements of counsel in their briefs or argument while enlightening*
to the Court are not sufficient for purposes of granting a motion to dismiss or summary

1 authenticate any document in this case regarding the alleged Contract since counsel has no
2 personal knowledge of any alleged transaction in this matter. See, e.g., *Key Bank of Me. v. Lisi*,
3 225 AD2d 669, 669 (2d Dept 1996) ("affirmation of . . . attorney who had no personal
4 knowledge of the facts . . . did not constitute proof in admissible form and it [is] without
5 evidentiary value").

7 The Court must strike any alleged fact advanced by Defendant's counsel that is not
8 supported by an affidavit or other authenticated document(s) from Defendant or by
9 Defendant's corporate representative that is a competent fact witness with personal
10 knowledge of the claims, facts and documents (to authenticate) employed by Defendant in
11 this matter. See Federal Evidence Rule §§ 901, 902.

13 **FOR THE RECORD:** the Undersigned hereby ISSUES a continual objection to any
14 purported evidence proffered by counsel for Defendant, whether in writing or in open court,
15 that does not come from a valid document/evidence authenticated by a competent fact
16 witness with personal knowledge of an event, document or other evidence. This is a standing
17 and ongoing objection for any future hearings, if necessary.

21 *judgment.*" [emphasis added]); see also, *Loomis, In re*, 587 N.W.2d 427, 438 (S.D., 1998)
22 ("Attorneys cannot testify on behalf of their clients"); *Estes v. Millea*, 464 N.W.2d 616, 619
23 (S.D. 1990) ("[A]n attorney cannot testify on behalf of his client [citations omitted]. Further,
24 the communication with the circuit court was not in the form of an affidavit nor under oath.
25 It was merely argument in a trial brief. *This is clearly not evidence* and, thus, Williams'
26 interrogatory answer stands uncontradicted. ..." [emphasis added]); *Amos v. Cohen*, 2004-
27 Ohio-1265, ¶7 ("Because the roles of advocate and witness are inconsistent, it is generally
28 inappropriate for a trial attorney to testify on behalf of the client"). Statements of counsel
are not evidence. *Exeter Bank Corporation, Inc. v. Kemper Securities Group, Inc.*, 58 F.3d 1306,
1312 n.5 (8th Cir. 1995); *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978),
cert. denied, 440 U.S. 981 (1979).

1 The Undersigned hereby claims all of her rights at all times and waives none of them at
2 any time for any cause or reason.

3 The Undersigned expressively disavows all waivers of any rights that were not made
4 upon previous actual notice in the matters at hand.

5 That any verified declarations made by the Undersigned under oath are admissible into
6 the *evidence record in this matter and shall only be refuted by a rebuttal affidavit*, verified
7 declarations *or by testimony in court under oath by Defendant or its representative with*
8 *personal knowledge of the matters.*

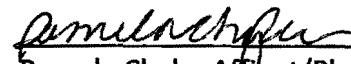
9 The Undersigned hereby claims and invokes the powers, protections and benefits of the
10 Statute of Frauds, especially where it speaks to the fact that in order to sue and receive a
11 judgment, a claim of debt MUST BE PROVEN. The only way to prove the existence of a debt is
12 by evidence, in open court on the record, through the testimony, under oath, of a competent
13 fact witness with firsthand knowledge and subject to cross examination.

14 The Undersigned dispels and disavows any and all adverse *presumptions* in this matter.

15 The Undersigned does not waive any rights. All Rights Are Reserved/Retained Without
16 Prejudice, known and unknown.

17 The Undersigned hereby claims the Due Process right to have Findings of Fact and
18 Conclusion of Law included and in support of any Order of this Court denying this motion. The
19 United States Supreme Court in *Federal Maritime Commission v. South Carolina States Ports*
20 *Authority*, 535 U.S. 743 (2002) has held, "The parties are entitled to know the findings and
21 conclusions on all of the issues of fact, law, or discretion presented on the record" (citing *Butz*
22 *v. Economou*, 438 U.S. 478 [1978]).

1 Judicial Notice is appropriate for information obtained from governmental websites.
2 *Paralyzed Veterans of Am. v. McPherson*, 2008 U.S. Dist. LEXIS 69542, 17-18 (court took judicial
3 notice if information appearing on and printed from official government website. and also see
4 *Fontenot v. Wells Fargo Bank N.A.*, 198 Cal App. 4th 256, 264 (2011) “The official act of
5 recordation and common use of a notary public in the execution of such documents assure
6 their reliability, and the maintenance of the documents in the recorder’s office makes their
7 existence and text capable of ready confirmation, thereby placing such documents beyond
8 reasonable dispute.” Additionally, *Intri-Plex Technologies, Inc. v. Crest Group, Inc.*, 499 F. 3d
9 1048, 1052 (9th Cir 2007) (judicially noticing pleadings, orders, and other papers on file in other
10 actions).
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15 Pamela Chyba Affiant/Plaintiff
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